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Message Text

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ACTION NEA-10

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-02 INR-10
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INFO AMEMBASSY DACCA
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E.O. 11652: N/A
TAGS: PINT,PGOV, CE
SUBJECT: NEW SPECIAL PRESIDENTIAL COMMISSIONS LAW

1. SUMMARY. ON FEBRUARY 2, 1978, THE NATIONAL STATE ASSEMBLY KNSA) IN ITS FINAL SITTING WITH J.R.JAYEWARDENE AS PRIME MINISTER PASSED A SPECIAL PRESIDENTIAL COMMISSIONS OF INQUIRY LAW. THE FIRST COMMISSION OF INQUIRY MAY SIT IN APRIL. FORMER PRIME MINISTER MRS. BANDARANAIKE AND SOME OF HER MINISTERS COULD COME BEFORE IT. SOME LIKEN THE NEW LAW TO THE RECENTLY ABOLISHED CRIMINAL JUSTICE COMMISSION ACT (CJC). WE SEE FEW SIMILARITIES. END SUMMARY.

2. PRIME MINISTER'S OBJECTIVE

THE COMMISSIONS OF INQUIRY BILL WAS HASTILY PASSED BY THE NSA, SO MUCH SO THAT IT HAD TO BE LABLED AS AN URGENT BILL AND REFERRED BY THE SPEAKER TO THE SUPREME COURT FOR ITS ADVICE ON THE BILL'S CONSTITUTIONALITY. THE SUPREME COURT ANSWERED AFFIRMATIVELY. PRESIDENT JAYEWARDENE ARGUED THAT THE EXISTING COMMISSIONS OF INQUIRY LAW WAS
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INADEQUATE TO DEAL WITH CERTAIN MATTERS, DID NOT PROVIDE FOR PUNISHMENTS BASED ON COMMISSIONS' FINDINGS, AND WAS TOO LIMITED IN THE TYPES OF EVIDENCE THAT COMMISSIONS COULD RECEIVE. HE WANTED THE NEW LAW TO BE ON THE STATUTE BOOKS FOR ANY GOVERNMENT TO USE AGAINST ANY PREVIOUS GOVERNMENT, INCLUDING HIS OWN. HE SAID THAT IF WRONGFUL ACTS WERE COMMITTED UNDER THE RUBRIC OF EMERGENCY

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POWERS, THERE SHOULD BE A MECHANISM FOR DEPRIVING THOSE WHO MISUSE EMERGENCY POWERS OF THEIR "CIVIC RIGHTS", THEIR RIGHTS TO VOTE OR PARTICIPATE IN GOVERNMENT.

3. LITTLE OPPOSITION TO THE BILL

NEITHER THE SRI LANKA FREEDOM PARTY (SLFP) NOR THE TAMIL UNITED LIBERATION FRONT (TULF) DIRECTLY OPPOSED THE BILL. MRS. BANDARANAIKE, KNOWING FULL WELL THAT THE LAW COULD BE USED AGAINST HER, SAID THAT SHE COULD SUPPORT THE BILL IF SUPREME COURT JUDGES WERE TO BE THE COMMISSIONERS. IF LESSER JUDGES WERE APPOINTED, THERE SHOULD BE A RIGHT TO APPEAL DECISIONS. THE TULF ALSO ARGUED FOR THE RIGHT OF APPEAL. IN COMMITTEE, THE BILL WAS AMENDED TO PROVIDE THAT COMMISSIONERS SHOULD BE SUPREME COURT JUDGES OR JUDGES OF ANY COURT NOT LOWER THAN A DISTRICT COURT.

4. POWERS OF THE COMMISSIONS

THE PRESIDENTIAL COMMISSIONS LAW GIVES THE COMMISSIONS THE POWER TO SUBPOENA ANY OFFICER OF ANY BANK, INCLUDING THE CENTRAL BANK, ANY OFFICER OF THE INLAND REVENUE DEPARTMENT, AND ANY OFFICER OF THE EXCHANGE CONTROL DEPARTMENT. IT CAN ALSO CALL FOR THOSE OFFICERS TO

PRODUCE ANY BOOKS OR DOCUMENTS RELATIVE TO A PARTICULAR CASE AND CAN PROHIBIT WITHDRAWALS FROM ANY BANK, IMPOUND PASSPORTS AND TRAVEL DOCUMENTS, AND ORDER TELECOMMUNICATIONS AUTHORITIES TO PRODUCE RELEVANT MESSAGES. THESE ARE POWERS THAT THE CJC HAD AND ARE OUTSIDE THE POWERS OF THE ORDINARY COURTS. HOWEVER, IN CONTRAST TO THE CJC, PRESIDENTIAL COMMISSIONS ARE BOUND BY THE RULES OF EVIDENCE APPLICABLE TO ORDINARY COURTS AND WILL NOT HAVE PUNITIVE POWERS. PRESIDENTIAL COMMISSIONS CAN ONLY RECOMMEND TO THE PRESIDENT THAT AN OFFENDER BE DEPRIVED OF HIS CIVIC RIGHTS UP TO A MAXIMUM OF SEVEN YEARS. REMOVAL OF CIVIC RIGHTS DISQUALIFIES A PERSON FROM VOTING,FROM BEING A CANDIDATE FOR POLITICAL OFFICE, AND FROM BEING EMPLOYED AS A PUBLIC SERVANT. JAYEWARDENE HAS ASKED FOR AN ADDITIONAL PROVISION TO BE INCLUDED IN THE UPCOMING CONSTITUTIONAL AMENDMENT PROVIDING THAT A PERSON CAN BE DEPRIVED OF HIS CIVIC RIGHTS ONLY AFTER RESOLUTION IS INTRODUCED IN THE NSA,DEBATED,AND PASSED. NO MENTION HAS BEEN MADE OF WHAT VOTE WOULD BE REQUIRED TO PASS SUCH A RESOLUTION.

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5. COMMENT

PRIOR TO COMING TO POWER, JAYEWARDENE AND HIS PARTY HAD ACCUSED THE PREVIOUS GOVERNMENT OF SERIOUS ABUSES OF POWER,PARTICULARLY UNDER THE EMERGENCY RULE WHICH WAS IN FORCE FROM 1971 TO 1977. PROSECUTION OF ALLEGED ABUSES ARE DIFFICULT UNDER ORDINARY LAW AND CAN ONLY BE INITIATED ON COMPLAINTS OF SPECIFIC VIOLATIONS OF CRIMINAL LAW FILED AFTER A POLICE INVESTIGATION. THE FINDINGS ARE ALSO SUBJECT TO APPEAL. THE PRESIDENTIAL COMMISSIONS WILL HAVE BROAD INVESTIGATORY POWERS AND CAN INVESTIGATE UPON THE COMPLAINT OF ORDINARY CITIZENS. THEY WILL BE ABLE TO PROCEED MUCH MORE RAPIDLY THAN THE ORDINARY COURTS AND UNLIKE THE ORDINARY COURTS WILL
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NOT HAVE TO GIVE THE BENEFIT OF THE DOUBT TO THE ACCUSED. ALTHOUGH THERE APPEAR TO BE SUFFICIENT SAFEGUARDS IN THE PRESIDENTIAL COMMISSIONS LAW, HOW THE COMMISSIONS WILL ULTIMATELY ACT WILL ONLY BE DETERMINED BY HOW CONSCIENTIOUSLY THE COMMISSIONERS, THE PRESIDENT,AND THE NSA FULFILL THEIR ROLES.
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